

Consideration for recommendation of preliminary adoption of a new rule section to coordinate historic preservation reviews for state agencies proposals that are governed by both Federal and State law; Administrative Cause No. 11-137H

Proposed 312 IAC 20-4-11.5 would allow an applicant to cause the DNR's Division of Historic Preservation to coordinate, in a single process, similar reviews required by Federal law and State law. IC 14-10-2-4(b) authorizes the Commission to adopt rules to exempt an activity from licensing under IC 14-21, and most other chapters of IC 14, "if the activity poses not more than a minimal potential for harm." For the proposed new rule section, licensure (a "certificate of approval") would still be completed through the DNR, including an opportunity for administrative review and judicial review. An applicant would not be required to complete two separate but similar licensure processes. The proposed rule would provide regulatory efficiencies while increasing opportunities for participation by the public and interested parties in decisions on affected historic sites and structures. The proposal was presented previously to the Advisory Council and to the Historic Preservation Review Board.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #12-

DIGEST

Adds 312 IAC 20-4-11.5 to establish a process by which a person may seek dual review and action by the Department of Natural Resources, Division of Historic Preservation and Archaeology, for a project that is potentially subject to both 16 USC 470f and IC 14-21-1-18. Provides the Division Director may issue a letter of clearance to the Indiana Department of Transportation for a qualified bridge project. Effective 30 days after filing with the Publisher.

312 IAC 20-4-11.5

SECTION 1. 312 IAC 18-1-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 20-4-11.5 Dual review proposals
Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 11.5. (a) This section governs a proposal that requires review by the division potentially under both 16 USC 470f and IC 14-21-1-18.

(b) A person may submit a proposal to the division for a project that is subject to review by the division under 16 USC 470f and IC 14-21-1-18.

(c) A person that wishes to make a submission under this section must provide a transmittal letter to the division with "Dual Review Project" in the subject line.

(d) Upon receipt of a transmittal letter, the division shall conduct a review that satisfies both:

- (1) Section 106 of 16 USC 470f and 36 CFR 800; and**
- (2) IC 14-21-1-18 and this rule.**

(e) As soon as practicable, the division shall acknowledge to the person its receipt of the transmittal letter. The acknowledgment shall state the division would review the information submitted under the authorities referenced in subsection (d). In addition to any notification required under Section 106 of 16 USC 470f and 36 CFR 800, the division shall provide notification of the dual review to the following:

- (1) Interested persons.**
- (2) Members of the review board.**
- (3) By posting on the division's website.**

(f) If a submission under this section results in a finding under 36 CFR 800 of no historic properties affected or no adverse effect on historic properties, and the Indiana State Historic Preservation Officer concurs in the finding, the division director shall issue a letter of clearance for the project under this rule.

(g) If a submission under this section results in a finding of adverse effect on historic properties under 36 CFR 800, and a memorandum of agreement is executed under 36 CFR 800, the division director shall consider the terms of the memorandum of agreement. If the division director concludes the objectives and purposes of IC 14-21-18 have been achieved, the division director shall issue a letter of clearance under this rule and exempt the person from obtaining a certificate of approval under IC 14-21-1-18 concurrently with the execution of the memorandum of agreement. In addition to any remedy under Section 106 of 16 USC 470 and 36 CFR 800, the department may initiate an enforcement action under IC 14 to achieve compliance with the memorandum of agreement.

(h) If a dual review initiated under this section results in a finding of adverse effect on historic properties under 36 CFR 800, but a memorandum of agreement is not executed, the person making the submission shall obtain a certificate of approval regarding the project from the review board under section 13 of this rule before taking action that would alter the historic significance or character of the site.

(i) If the Indiana Department of Transportation makes a submission for a project involving a bridge covered by the July 17, 2006 "Programmatic Agreement Among the Federal Highway Administration, the Indiana Department of Transportation, the Indiana State Historic Preservation Office, and the Advisory Council for Historic Preservation Regarding the Management and Preservation of Indiana's Historic Bridges", and a finding of adverse effect on historic properties results under 36 CFR 800, the division director shall consider the mitigations prescribed for the adverse effects under the Programmatic Agreement. If the division director concludes the objectives and purposes of IC 14-21-18 are achieved, the division director shall issue a letter of clearance under this rule and exempt the person from obtaining a certificate of approval under IC 14-21-1-18. (*Natural Resources Commission; 312 IAC 20-4-11.5*)